CITY OF APOPKA

Minutes of the regular City Council meeting held on May 1, 2019, at 1:30 p.m., in the City of Apopka Council Chambers.

PRESENT:	Mayor Bryan Nelson Commissioner Doug Bankson Commissioner Kyle Becker Commissioner Alice Nolan Commissioner Alexander Smith City Attorney Joseph Byrd City Administrator Edward Bass
PRESS PRESENT:	Teresa Sargeant – The Apopka Chief Channel 6 News

INVOCATION: - Mayor Nelson called on Father Matthews of St. Francis of Assisi to give the invocation.

PLEDGE OF ALLEGIANCE: Mayor Nelson introduced Chelsey Roth, Orange Technical College student, who led in the Pledge of Allegiance. She stated on May 1, 1920, legendary slugger Babe Ruth smashes his 50th Major League Baseball career home run. His first for the Yankees.

APPROVAL OF MINUTES:

1. City Council regular meeting April 17, 2019.

   MOTION by Commissioner Nolan, seconded by Commissioner Becker to approve the minutes of April 17, 2019. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith, and Nolan voting aye.

AGENDA REVIEW – City Administrator Bass said Item 2 under Business has been withdrawn.

PRESENTATIONS:

1. **Career Day Assignment –** Commissioner Nolan said her son, Clifford Nolan, shadowed Mayor Nelson for a day as his Career Day Assignment. She read his report, and shared a presentation of his activities during the day and said he enjoyed his day and had quite a learning experience.

2. **Certificate of Completion –** Kathy Till presented Vice Mayor Bankson with his certificate for completing the 2019 Institute for Elected Municipal Officials III - The Leadership Challenge.

3. **Need to Read -** Pastor Roderick Zak, Pastor McCray, and Belle Johnson were present to review the Need to Read program where they donate books, read to children and said their goal is to lower illiteracy and build a child's ability to read.

Mayor Nelson recognized the Apopka Christian Academy; former Mayor Joe Kilsheimer, and Pam Cribb (Chelsey's mentor). He thanked them for being a part of the City Council meeting.

4. **General Fund Budget Overview** – City Administrator Bass reviewed the summary statement of revenue and expenditures. He pointed out this statement shows the amount budgeted, year to date expenditures, and the percentage of expenditures. He pointed out Facilities Maintenance is at 24% due to major infrastructure projects not being completed and gave the example of the City Hall Chiller.

   Commissioner Becker thanked Mr. Bass for this report, stating this is what he was asking for and said the notations were very helpful in explaining expenditures.

PUBLIC COMMENT:

Rod Olsen spoke of his concerns regarding the overcrowding of our schools. He said Theresa Jacobs, Orange County Public Schools Chair, sent him an email stating, "the charter does not prevent school districts from meeting capacity needs through the use of portables." He stated that contrary to what Melissa Byrd indicated in a public meeting, Ms. Jacobs said there was no rubberstamping on development and they review each one. He declared OCPS owns 787 portables and cannot confirm how many they are renting. He stated developers impact fees need to be increased. Currently 153 portables in Apopka house 20% of our children. He said if Apopka continues at the same rate of growth we will need an additional seven elementary schools, two middle schools and one high school by 2026 when the first elementary school is scheduled. He said children are our future and need quality teachers and schools that they deserve. He thanked Parks and Recreation for the soccer season and Police and Fire for Public Safety Day.

Commissioner Becker said the OCPS workshop is scheduled for June 18, 2019, at 4:30 p.m.

David Hoffman said he is a Rock Springs Ridge resident and said there was a crisis in Rock Springs Ridge and the citizens are burdened in an effort to save the Rock Springs Ridge community. He said the City of Apopka, elected officials and HOA Board should be their advocates. He said he has been following this for ten years with their backs against the wall. He said the PUD stipulates one DU/AC and once the community is built out that, there will be no further building.

Commissioner Bankson pointed out that they cannot respond to quasi-judicial issues.

Mayor Nelson said the letter by City Attorney Byrd was very clear and lays the groundwork of where we are today.

Commissioner Becker said he listened to the residents of Rock Springs Ridge to get their view. He stated Mr. Byrd's letter states the burden of proof is on the developer and Council cannot provide information as to where they stand at this time.

CONSENT

1. **Authorize a memorandum of understanding with CareerSource for the Apopka Youth Works Program.**

2. **Approval to close the Iberia Bank account and open a money market account at One Florida Bank.**
3. **Award a contract for the re-construction of the roadway located at Vick Rd. & West Martin St.**
4. **Authorize the Agreement for professional engineering services with Tetra Tech, Inc. for Preliminary Engineering and Design of the Northwest Pond Irrigation Pump Station, located at the Apopka Northwest Recreation Center, in the amount of $31,880.**
5. **Authorize the issuance of blanket purchase orders.**

MOTION by Commissioner Nolan, and seconded by Commissioner Smith, to approve five Items on the Consent Agenda. Motion carried unanimously with Mayor Nelson and Commissioners Bankson, Becker, Smith and Nolan voting aye.

BUSINESS

1. Preliminary Development Plan – Avian Pointe Parcel A
   Project: Apopka Clear Lake Investments, LLC
   Location: South of Peterson Road, east of SR 429 and north of Clearwater Lake

   Bobby Howell, Senior Planner provided a brief lead-in for the Avian Pointe Parcel A Preliminary Development Plan. He said this was for the construction of 56 single-family residential homes on 29.896 acres within the Avian Pointe PUD. He reviewed the location on a vicinity map and gave the surrounding land uses. He affirmed the Avian Pointe PUD allows for the development of 758 residential units consisting of single-family, townhomes, and apartment units. He pointed out Parcel A on the approved Master Plan. Consistent with the master plan, the lot width is 60 feet on internal lots and 75 feet to lots adjacent to Clear Lake Estates. The minimum living area is 1700 square feet. There is a 20-foot wide landscape buffer adjacent to the Clear Lake Estates subdivision. He reviewed the ingress/egress points. He advised that Grand Avian Parkway connects Lust Road to Peterson Road and allows access to all proposed developments within the PUD. He affirmed all elements of the Preliminary Development Plan are consistent with the approved PUD Maser Plan. DRC and Planning Commission recommend approval.

   Commissioner Bankson expressed concerns regarding the amenities and when they will be built.

   Jason Maloney said he is the civil engineer for the project said Parcel B is for the recreational parcel and said the plans were submitted to the City and the applicant intends to construct sooner than what the threshold allows. He stated the pool and clubhouse should have construction started in late 2019.

   In response to Commissioner Becker regarding parking, Mr. Maloney advised there was open parking for anyone. David Moon stated the intent was that no parking would be placed along the spine road and there will be a bicycle path along the spine road.

   Mayor Nelson suggested where they could to plant trees that are conducive to native Florida and match trees that are in the birding park.

Mayor Nelson opened the meeting to a public hearing.

Rod Olsen said 758 homes equates to 253 children or 9 – 13 portables. OCPS said there would not be an elementary school in our area until 2026.

Commissioner Becker pointed out that this development was factored in to the list of developments that was submitted.

MOTION by Commissioner Nolan and seconded by Commissioner Becker, to approve the Avian Pointe Preliminary Development Plan. Motion carried unanimously with Mayor Nelson and Commissioners Bankson, Becker, Smith, and Nolan voting aye.

2. Approve an agreement with On Street Media Florida, Inc., Installation of media frames on Traffic Signal Control Cabinets in the right of way for traffic signals maintained by the City of Apopka - **ITEM WITHDRAWN**

PUBLIC HEARINGS/ORDINANCES/RESOLUTION

1. Ordinance No. 2717 - Second Reading – Change of Zoning; assignment of Overlay District; approval of Master Plan from "City" R-1AAA to "City" KPI-MU (Kelly Park Interchange Mixed Use)
   Project: Min Sun Cho, Hong S. Kim and Deok H. Kim – The Reserve at Kelly Park Subdivision
   Location: 4068, 4046, 4022 Plymouth Sorrento Road
   The City Clerk read the title as follows:

ORDINANCE NO. 2717

AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, CHANGING THE ZONING FROM "CITY" R-1AAA (REIDENTIAL SINGLE-FAMILY DISTRICT) TO "CITY" KPI-MU (KELLY PARK INTERCHANGE MIXED-USE DISTRICT), AND ASSIGNING A KELLY PARK INTERCHANGE NEIGHBORHOOD OVERLAY DISTRICT, FOR CERTAIN REAL PROPERTY GENERALLY LOCATED ON THE NORTHEAST CORNER OF PLYMOUTH SORRENTO ROAD AND APPY LANE, COMPRISING 19.97 ACRES MORE OR LESS, AND OWNED BY <u>MIN SUN CHO, HONG SIK KIM, AND DEOK HWA KIM</u>; PROVIDING FOR DIRECTIONS TO THE COMMUNITY DEVELOPMENT DIRECTOR, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

David Moon, Planning Manager said after the staff report was prepared for the meeting, the applicant reviewed their product and following the last meeting, they came back with a recommended change to the setback conditions Council accepted. Council previously agreed to single-family residential building setback a minimum of 22 feet from the front property line and a front entry garage recessed 5 feet from the front of the house. The applicant has requested a change in the language to a minimum of 25 feet for the house from the front property line and the garage setback a minimum of 27 feet. He pointed out this is the same distance, but different language. He said staff also would like the language that states porches shall have a minimum setback of 18 feet from the front property line and carriage and side entry garages not be allowed.

In response to Commissioner Becker inquiring to the Martinez document with regards to this issue, City Attorney Byrd said the article sent out regarding the Martinez doctrine, as it has been associated with the Mann case is misrepresented and when looking at the holding in that case, it does not say the court approved based upon the Martinez document, but states in spite of that doctrine. Also, the school concurrency was enacted in 2005. He said you go back to the standard we have and if it is quasi-judicial we are looking at due process, substantial competent evidence, and does it fit with our comprehensive plan, LDC, and all of our documents.

Giovanna Zapata is the engineer of record for this project. They are in agreement with the staff comments and requirements for the project.

Mayor Nelson opened the meeting to a public hearing.

Rod Olson said 61 homes was another 20 students, and another portable.

No one else wishing to speak, Mayor Nelson closed the public hearing.

MOTION by Commissioner Becker, and seconded by Commissioner Bankson, to adopt Ordinance No. 2717 with the condition of a minimum of a 25-foot setback for the house from the front property line and the garage setback a minimum of 27-feet from the front property line. In addition, porches shall have a minimum setback of 18-feet from the front property line and carriage and side entry garages not be allowed. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith, and Nolan voting aye.

2. Ordinance No. 2723 – First Reading – Annexation
Project: American Sanford Four, LLC – Location: 4820 Wesley Road
Project: Steven R. Rubright – Locations: 4813 Wesley Road; Wesley Road; 4814 Wesley Road; 4686 W. Orange Blossom Trail
Project: JP Holdings, Inc. – Location: 4910 Wesley Road
Project: Rubright Properties, LLC – Location: 4670 W. Orange Blossom Trail
Project: Rubright Family, LP – Location: 5000 Longview Road
Project: JP Holdings, Inc. & James Scott Pridgen – Location: Wesley Road
Project: Douglas and Lisa Surrett; and James P. Purdy – Location: 5101 Wesley Road
The City Clerk read the title as follows:

ORDINANCE NO. 2723

AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, TO EXTEND ITS TERRITORIAL AND MUNICIPAL LIMITS TO ANNEX PURSUANT TO FLORIDA STATUTE 171.044 THE HEREINAFTER DESCRIBED LANDS SITUATED AND BEING IN ORANGE COUNTY, FLORIDA,

OWNED BY AMERICAN SANFORD FOUR, LLC; STEVEN R. RUBRIGHT; JP HOLDINGS, INC.; RUBRIGHT PROPERTIES, LLC; RUBRIGHT FAMILY, LP; JP HOLDINGS, INC.; AND JAMES SCOTT PRIDGEN; DOUGLAS AND LISA SURRETT; AND JAMES P. PURDY; GENERALLY LOCATED WEST OF U.S. ROUTE 441 AND NORTH OF HOGSHEAD ROAD; PROVIDING FOR DIRECTIONS TO THE CITY CLERK, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

Phil Martinez, Planner reviewed the proposed annexations comprising of approximately 349.37 acres. He reviewed the subject parcels on a map and the surrounding land uses. On March 6, 2019, City Council approved the third amendment to the settlement interlocal Joint Planning Agreement with Orange County that changes the boundary so that all parcels are within this boundary. On April 23, 2019, Orange County Board of County Commissioners adopted this third amendment. The recommendation is to accept the first reading of Ordinance No. 2723 and hold it over for second reading and adoption.

Dan O'Keefe, representing the applicant, said they appreciate staff's work on this and would request approval.

MOTION by Commissioner Nolan, and seconded by Commissioner Bankson to approve Ordinance No 2723 at first reading and hold it over for a second reading. Motion carried unanimously with Mayor Nelson and Commissioners Bankson, Becker, Smith, and Nolan voting aye.

3. **Ordinance No. 2727 – First Reading – Consenting to the Orange County Lake McCoy MSBU and levy of special assessments on certain benefitted properties**
The City Clerk read the title as follows:

ORDINANCE NO. 2727

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF APOPKA, FLORIDA, PURSUANT TO SECTION 125.01(1)(Q), FLORIDA STATUTES, CONSENTING TO THE ORANGE COUNTY LAKE MCCOY MUNICIPAL SERVICE BENEFIT UNIT AND THE LEVY OF SPECIAL ASSESSMENTS ON CERTAIN BENEFITTED PROPERTIES LOCATED WITHIN THE MUNICIPAL BOUNDARIES OF APOPKA, FLORIDA IN ORDER TO PAY A PORTION OF THE COSTS OF LAKE MAINTENANCE AND CLEANING, PROVIDING FOR SEVERABILITY, AND AN EFFECTIVE DATE.

City Administrator Bass said in May 2002 Orange County established the Lake McCoy MSBU by resolution for general lake cleaning maintenance and invasive aquatic plant control. At that time, only unincorporated Orange County parcels were levied special assessments for this benefit. He advised 55% of the parcels along Lake McCoy are in unincorporated Orange County, and 45% are located within the City of Apopka. September 19, 2016, Orange County reached out to the City of Apopka to pursue creating an agreement between the County and City to outline equitable cost share arrangement for lake management services. August 2017, staff met with Orange County representatives and agreed to an immediate and long term plan for this management. Orange County noticed and held a public hearing on April 9, 2019, to amend the Lake McCoy MSBU to include and assess lake front parcels located within the City of Apopka's jurisdiction. Upon adoption of this ordinance both Orange County and City of Apopka lake front parcels will equitably contribute toward the Lake McCoy MSBU. The non-ad valorem assessment is currently $235.01 per parcel annually. This will appear on the 2019 tax roll.

Mayor Nelson opened the meeting to a public hearing.
Jack Cooper thanked Commissioner and Mayor Nelson for initiating this. He thanked Mr. Bass for his work on this matter. He said it helps to keep weeds out of the Wekiva River Basin.

No one else wishing to speak Mayor Nelson closed the public hearing.

MOTION by Commissioner Bankson, and seconded by Commissioner Nolan to approve Ordinance No. 2727 at first reading and hold it over for a second reading. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith, and Nolan voting aye.

CITY COUNCIL REPORTS
Commissioner Nolan thanked the City staff for their hard work on the Apopka Foliage Festival and said there was a good turnout. She also said with no objection from Council she would place a graduation quote in the program of the Seventh Day Adventist Pre-school graduation.

Commissioner Bankson reiterated the workshop by OCPS on June 18th. He asked what Council can do regarding overcrowding of the schools and said they need to work together with the school board.

Mayor Nelson said staff has been working on this and had a meeting with OCPS staff last week. He said the school plan is subjective and can move based on numbers. Staff will meet again and he cautioned we have to be careful with the development numbers. He said they are actively working on this matter.

Commissioner Smith expressed concerns regarding affordable housing in Apopka and said Mayor Demmings has assigned a task force regarding this. He wants to make sure the City of Apopka has a resident on that taskforce.

Commissioner Becker asked if there was an update from a park replant plan.

Mayor Nelson said there should be something available by the end of the month.

Commissioner Becker asked if staff was working on the lot size for the Kelly Park Interchange area to which Mr. Hitt said they were working on this and should have something by July.

CITY ADMINISTRATOR'S REPORT – No report.

CITY ATTORNEY'S REPORT
1. Request for reimbursement for Joe Kilsheimer's Attorney fees.

City Attorney Byrd reviewed a request from former Mayor Kilsheimer for reimbursement for attorney fees as related to his successful defense of ethics charges that were dismissed by the Florida Ethic's Commission. He advised the law in the State of Florida allows for reimbursement of attorney fees for public officials. Mr. Kilsheimer's attorney made him aware of a case that allowed for the reimbursement of attorney fees when successful in their defense. There are also AG opinions regarding this as well. He advised the Commission will need to first find that the public official was acting in his official capacity and secondly was there a public purpose. The third motion Council will need to make, if they determine so, vote to reimburse his expenses.

Mr. Kilsheimer thanked City Attorney Byrd for his memorandum and said he was here to address his request for reimbursement of attorney fees. He said Mr. Byrd's memo was thorough and complete, stating he talks about the two-prong test, and said it was clear this case occurred while he was serving as Mayor and secondly, in filing for dismissal under section eight it is written "for a violation under Florida Statutes it must be established that the respondent used property or resources within his trust to secure special privilege, benefit, or exemption for himself or others." The advocate also wrote "the evidence demonstrates that public resources were used for the public's benefit, specifically public school children, and not for a private purpose, or for the benefit of a business partner." It was concluded that the actions could not be attributed to a wrongful intent. The complaint was unanimously dismissed by the Ethics Commission. He respectfully asked Council to vote yes on his request.

MOTION by Commissioner Bankson, and seconded by Commissioner Smith that Mayor Kilsheimer was acting in his official capacity. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith, and Nolan voting aye.

MOTION by Commissioner Nolan, and seconded by Commissioner Becker that the litigation of the underlying complaint served a public service. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith, and Nolan voting aye.

MOTION by Commissioner Nolan and seconded by Commissioner Becker to reimburse former Mayor Kilsheimer's legal fees of $8,460. Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith, and Nolan voting aye.

2. Settlement for sexual harassment claim

City Attorney Byrd said this was a matter where there was a sexual harassment claim and a retaliation claim. There was a filing made with the Florida Human Resources Commission that was dismissed based upon the fact the filer desired to seek litigation. The initial demand was for $90,000 and other matters. There is a willingness to settle for $30,000 and no suit has been filed. He recommended accepting the settlement for $30,000.

MOTION by Commissioner Nolan, and seconded by Commissioner Smith to accept the settlement in the amount of $30,000. **Motion carried unanimously with Mayor Nelson, and Commissioners Bankson, Becker, Smith, and Nolan voting aye.**

3. Settlement offer for $60,000 in the Richard Anderson case.

City Attorney Byrd said this matter is not on the agenda, but due to an offer settlement having been made in earnest and good faith just within the last four hours, and has to do with the City of Apopka vs Anderson case. He said Attorney Shepard was also present. There was a mediation amount that previously came before Council for $60,000 that was not approved. The Plaintiff is offering to settle this for that same amount, inclusive of all fees and mutual releases of both the City and Plaintiff. While this is not in keeping of protocol for matters on the agenda, he felt it incumbent upon him to bring the offer to Council today as there is a pending motion to be heard in a few days.

Attorney Shepard said the anticipation was that if this case was going to be resolved, and setting this motion hearing for next week that he was working on earlier in the day might generate the opportunity to settle the case again. He stated he did not know if minds have changed regarding the amount, but it is probably why the timing is so. The terms, if agreed to, will also include a non- disparagement clause for both parties and hopefully end a long overdue chapter in the City's history. He stated in terms of downside, there are none, except the City does not get money back and pays out money. In terms of upsides, it ends the matter. If the City chooses to go to trial we could win and it is a stipulated sum that if we win will take it into the six figure range. However, there is no guarantee we will ever actually be able to collect from Mr. Anderson.

Commissioner Bankson said he would like to see us get away from the personal politics of this and move forward with what is best for the residents.

Commissioner Becker said there was a clause previously regarding future employment with the city to which Mr. Shepard said the document includes settlement and mutual release and there is no such provision for future employment with the city. Neither was there an anti-disparagement provision. He advised if approved and the document is signed by both parties, the case will be completely over.

City Attorney Byrd advise they have agreed to the terms of the agreement.

Commissioner Becker said Council did vote at the time to terminate the contract based on merits of the case. He stated there is a strong ability to state our case and potentially win. He declared it is hard for him to get behind any settlement.

Mayor Nelson said he would be voting no, solely based upon the protocol and policy set for matters to be on the agenda by Friday before the meeting so to give Council and the public time to review matters coming before Council.

MOTION by Commissioner Smith, and seconded by Commissioner Nolan to accept the offer of $60,000 with amendments of a non-disparagement clause, and a no rehire clause as well as this be complete before May 8, 2019. Motion carried 3-2 with Commissioners Bankson, Smith, and Nolan voting aye, and Mayor Nelson and Commissioner Becker voting nay.

MAYOR'S REPORT – Mayor Nelson said they were looking for additional employers for the youth works program. He reminded all the Mayor's prayer breakfast is in the morning and they will be on the front steps of City Hall at 12:00 noon.

Mayor Nelson thanked Parks and Recreation staff and the streets and grounds crew for their hard work this past weekend for the Art and Foliage Festival.

Mayor Nelson reported that so far the City has $500,000 in the state budget for Fire Station 6. He said this could still be vetoed, but he will be working to keep it in the budget.

ADJOURNMENT: There being no further business the meeting adjourned at 3:21 p.m.

ATTEST:

Bryan Nelson, Mayor

Linda F. Goff, City Clerk